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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/024,620
Filing Date: December 21, 2001
Appellant(s): GIACCHETTI ET AL.

MAILED

FEB 01 2007

GROUP 3600

Frank A. Italiano
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/15/2005 appealing from the Office action mailed 12/01/2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Maloney et al. WO 01/18674 A2

Rosenblatt et al. US 2002/0007276

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1- 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maloney et al. (WO 01/18674 A2) in view of Rosenblatt et al. (US 2002/0007276).

Independent Claims

Claim 1. Maloney et al. (hereinafter Maloney) teaches a method for providing a customized product combination to a consumer, comprising:

- maintaining beauty information in a data structure (page 7, lines 9-12);
- receiving personal information about a subject (page 6, line 29 - page 7, line 3);
- selecting for presentation to the subject at least some beauty information maintained in the data structure based on the received information (page 7, lines 13-18; page 20, lines 14-18);
- presenting to the subject an image of the subject (page 20, lines 27-28); and
- causing said image to present to the subject the beauty information selected for presentation (page 20, lines 28-29).

Maloney does not specifically teach that said presented to the subject image is an image of a virtual beauty consultant.

Rosenblatt et al. (hereinafter Rosenblatt) teaches a method for virtual representatives adapted to be used as communications tools for Web retailers in customer-support applications, comprising a three-dimensional, photo-realistic, voice-enabled computer animation serving as a "virtual representative" [0007]; [0041]. Furthermore, Rosenblatt teaches that said virtual representatives could be generated based on the end user (subject) image [0044].

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Maloney to include that said presented to the consumer image is an image of a virtual beauty consultant, as disclosed in Rosenblatt, because it would advantageously allow content providers to make substantial improvements in their customers' shopping experience to prevent the loss of customers to other sites employing novel shopping experiences, thereby improving customer support and the overall quality of the shopping experience (Rosenblatt, [0003]). Furthermore, the use of said virtual representative applications for Web retailers would advantageously attract to e-shopping those customers who prefer to communicate face-to-face with a salesperson, thereby potentially increase revenue.

Claims 22 and 33. Maloney teaches a method and system for providing a customized product combination to a consumer, comprising:

- storing a series of beauty related queries (questionnaires) in a data structure (page 6, line 32);

- establishing an interface with a subject for enabling the subject to participate in an interactive beauty analysis (page 20, lines 23-25);

- presenting to the subject a human image (subject image) via a display device accessed by the subject (page 20, lines 27-29);

- audibly presenting to the subject at least one of the queries from the data structure, to thereby conduct the interactive beauty analysis with the subject (page 22, lines 18-19).

However, Maloney does not specifically teach that said "audibly presenting" step is conducted as if said human image (subject image) would appear as audibly presenting to the subject said at least one of the queries from said data structure.

Rosenblatt teaches a method and system for virtual representatives adapted to be used as communications tools for Web retailers in customer-support applications, comprising photo-realistic, voice-enabled computer animation serving as a "virtual representative" [0007]; [0041]. Said virtual representative are used with true recorded speech (storing feature) for the purposes of individual sales help [0028];[0041].

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Maloney to include that said "audibly presenting" step is conducted as if said human image would appear as audibly presenting to the subject aid at least one of the queries from said data structure, as disclosed in Rosenblatt, because it would advantageously allow consumers who have difficulty utilizing other input devices or have difficulty reading from the user interface to interact with said system (Maloney, page 20, lines 25-27). Furthermore, it would advantageously allow content providers to make substantial improvements in their customers' shopping experience to prevent the loss of customers to other sites employing novel shopping experiences, thereby improving customer support and the overall quality of the shopping experience (Rosenblatt, [0003]). Furthermore, the use of said virtual representative applications for Web retailers would advantageously attract to e-shopping those customers who prefer to communicate face-to-face with a salesperson, thereby potentially increase revenue.

Dependent claims.

Furthermore, Maloney teaches:

Claims 2 and 40. Said method and system, wherein beauty information includes personal queries (page 7, lines 28-29).

Claim 3. Said method, wherein beauty information includes at least one of product recommendation, a diagnostic recommendation, a cosmetic usage

recommendation, a prediction, a beauty profile, a preventative measure, and a remedial measure (page 7, lines 30-31).

Claims 4 and 40-41. Said method and system, comprising recording answers to the queries and asking the user additional queries incorporating into the additional queries information reflective of recorded answers (page 18, lines 1-9).

Claims 5 and 6. See reasoning applied to claim 22.

Claims 7-8, 12, 23, 29, 34 and 39. Said method and system, wherein the beauty information is stored in a data structure connected to the Internet, and wherein the method further comprises providing the subject with access to the data structure over the Internet (page 16, lines 20-34; page 18, lines 21-34).

Claim 9. See reasoning applied to claim 22.

Claim 10. Said method, wherein receiving personal information includes obtaining the information from the subject via an audio capture device (page 6, lines 30-31).

Claims 11 and 13. See reasoning applied to claim 1.

Claims 14, 27 and 38. See reasoning applied to claim 1.

Claims 15 and 26. Maloney teaches said method and system, including presenting to the subject an image of the subject to display virtual results of the selected product (page 20, lines 27-29); said (photographic) image is acquired (pre-recorded) via a device supplied in the test kit (page 26, claim 20).

Claims 16-17. Rosenblatt teaches said method and system, wherein presenting to the subject an image of a virtual beauty consultant involves allowing the subject to choose an image to be presented [0008]. The motivation to combine references would be to provide the subject with various level of control over the appearance and performance of the virtual representatives, thereby improving customer support [0008].

Claims 18, 24 and 35. Rosenblatt teaches said method and system, wherein presenting to the subject includes causing a synthesized human voice to be audibly projected through an audio output device [0026]. The motivation to combine references would be to advantageously allow consumers who have difficulty utilizing other input

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devices or have difficulty reading from the user interface to interact with said system (Maloney, page 20, lines 25-27).

Claim 19, 27 and 36. Rosenblatt teaches said method and system, wherein presenting includes causing a pre-recorded human voice to be audibly projected to the user [0028]; [0031]; [0036]. The motivation to combine references would be to advantageously allow consumers who have difficulty utilizing other input devices or have difficulty reading from the user interface to interact with said system (Maloney, page 20, lines 25-27).

Claims 20 and 31. Maloney teaches: displaying an image of the consumer to display virtual results of the product selected (page 20, lines 27-29).

Maloney does not specifically teach that said presented image is an image of a virtual user.

Rosenblatt teaches: displaying a three-dimensional, photo-realistic, voice-enabled computer animation of a human head serving as a "virtual representative" (user) [0007]; [0036]; [0041].

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Maloney to include that said presented image is an image of a human head serving as a "virtual representative" (user), as disclosed in Rosenblatt, because it would advantageously allow the subject to see the actual results of the use of cosmetic products, thereby potentially increase revenue.

Claims 21 and 32. See reasoning applied to claims 15 and 26.

Claim 28. See reasoning applied to claim 22.

Claim 30. Identifying to the subject at least one beauty test (page 11, lines 6-23). Providing trained specialists for performing said test indicates guidance in conducting said test.

Claim 37. See reasoning applied to claim 22.

Claim 42. Displaying various human virtual representatives to the subject through the terminal (Rosenblatt; [0008]), thereby indicating interaction with the subject.

Claim 43. See reasoning applied to claim 15.

Claim 44. Maloney teaches said computer implemented method, wherein, based on the received personal information about a subject, a Web server (page 6, line 29); selects and presents to the subject an image of the subject to display virtual results of the selected product (page 20, lines 27-29), thereby indicating "automatic" mode.

Claim 45. Maloney teaches said computer implemented method, including: based on the received personal information about a subject (page 6, line 29); automatically selecting and presenting to the subject an image of the consumer to display virtual results of the selected product (page 20, lines 27-29).

Claim 46. Maloney teaches said computer implemented method, including: based on the received personal information about a subject (page 6, line 29); automatically selecting and presenting to the subject an image of the consumer to display virtual results of the selected product (page 20, lines 27-29); wherein said received personal information about a subject includes a lifestyle information (page 7, line 22), thereby indicating information related to habits of the subject.

Claim 47. Maloney teaches said computer implemented method, including: automatically selecting and presenting to the subject an image of the consumer to display virtual results of the selected product (page 20, lines 27-29); wherein said presenting step is conducted in a customizable environment (page 16, lines 19-20).

Claim 48. Maloney teaches said computer implemented method, including: automatically selecting and presenting to the subject an image of the consumer (subject) to display virtual results of the selected product (page 20, lines 27-29), thereby indicating presenting to the subject a personification of the subject.

(10) Response to Argument

10.1. Applicant argues that Rosenblatt fails to disclose "presenting to the subject an image of a virtual beauty consultant" and "causing the image of the consultant to

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present to the subject the beauty information selected for presentation" (Claims 1-14 and 16-19).

In response to this argument, the examiner points out that Rosenblatt, a secondary reference, teaches the use of "virtual representative" or "virtual salesman" application, incorporating the essential qualities of a competent salesman, for Web retailers and service providers [0007]; [0016]. As per "beauty consultant", said "virtual representatives" or "virtual salesman" would have to be in cosmetic sales, because the primary reference, Maloney, teaches cosmetic applications. Furthermore, Maloney explicitly teaches presenting to the subject an image of the subject (page 20, lines 27-28); and causing said image to present to the subject the beauty information selected for presentation (page 20, lines 28-29).

10.2. Applicant argues that there is no motivation to combine the references (Claims 1-14 and 16-19).

In response to this argument the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, both Maloney and Rosenblatt relate to displaying interactive realistic images to a consumer in e-commerce environment, wherein said images are based on

a consumer's image. The motivation to combine Maloney with Rosenblatt to include that said presented to the consumer image is an image of a virtual beauty, consultant would be to advantageously allow content providers to make substantial improvements in their customers' shopping experience to prevent the loss of customers to other sites employing novel shopping experiences, thereby improving customer support and the overall quality of the shopping experience (Rosenblatt, [0003]). Furthermore, the use of said virtual representative applications for Web retailers would advantageously attract to e-shopping those customers who prefer to communicate face-to-face with a salesperson, thereby potentially increase revenue.

10.3. Applicant argues that the prior art fails to disclose that "presenting to the subject an image of a virtual beauty consultant involves causing a pre-recorded image of an actual human being to be displayed to the subject" (Claim 15).

In response to this argument the examiner stipulates that Maloney explicitly teaches presenting to the subject an image of the subject to display virtual results of the selected product (page 20, lines 27-29); said (photographic) image is acquired (pre-recorded) via a device supplied in the test kit (page 26, claim 20). Moreover, Rosenblatt also teaches that said virtual representative image can be generated based on two-dimensional images of real people [0009].

10.4. Applicant argues that the prior art does not teach presenting to the subject an image of a virtual user receiving the beauty information" (Claims 20 and 21).

In response to this argument the examiner points out that Maloney teaches displaying an image of the consumer to display virtual results of the product selected (page 20, lines 27-29). Maloney does not specifically teach that said presented image is an image of a virtual user. Rosenblatt teaches: displaying a three-dimensional, photo-realistic, voice-enabled computer animation of a human head serving as a "virtual representative" (user) ([0007]; [0036]; [0041]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Maloney to include that said presented image is an image of a human head serving as a "virtual representative" (user), as disclosed in Rosenblatt, because it would see the actual results of the use of cosmetic products, thereby potentially increase revenue.

10.5. Applicant argues that the prior art does not teach that presenting to the subject an image of a virtual beauty consultant includes automatically selecting an image of the virtual beauty consultant based on characteristics of the subject" (Claims 44-46).

In response to this argument it is noted, that Maloney teaches that based on the received personal information about a subject, a Web server selects and presents to the

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subject an image of the subject to display virtual results of the selected product (page 20, lines 27-29), thereby indicating "automatic" mode.

10.6. Applicant argues that the prior art does not teach that presenting to the subject an image of a virtual beauty consultant includes presenting the image of the virtual beauty consultant in a customizable environment" (Claim 47).

In response to this argument it is noted, that Maloney teaches automatically selecting and presenting to the subject an image of the consumer to display virtual results of the selected product (page 20, lines 27-29); wherein said presenting step is conducted in a customizable environment (page 16, lines 19-20). Specifically, Maloney discloses a customized user interface for providing a customized product combination. Maloney invention includes a Web server and Web browser on the Internet. The Internet and World Wide Web operate on a client/server model. The Web browser contacts Web server and requests data information, in the form of a Uniform Resource Locator (URL). This data information comprises the customized user interface comprising the customizable product choices which correspond to the consumer (page 16, lines 19-26).

10.7. Applicant argues that the prior art does not teach "presenting to the subject a personification of the subject, wherein the personification of the subject receives the selected information from the virtual beauty consultant" (Claim 48).

In response to this argument the examiner stipulates that Maloney teaches selecting and presenting to the subject an image of the subject to display virtual results of the selected product (page 20, lines 27-29), thereby indicating presenting to the subject a personification of the subject.

10.8. Applicant argues that the prior art does not teach "causing ... human image to appear as audibly presenting to the subject at least one of the queries from the data structure, to thereby conduct the interactive beauty analysis with the subject" (Claims 22-25 and 27-30).

In response to this argument the examiner points out that Maloney teaches presenting to the subject a human image (subject image) via a display device accessed by the subject (page 20, lines 27-29); and audibly presenting to the subject at least one of the queries from the data structure, to thereby conduct the interactive beauty analysis with the subject (page 22, lines 18-19). Rosenblatt was applied to show causing human image (virtual representative) to appear as audibly presenting to the subject pre-recorded data (speech) for the purposes of individual sales help [0028];[0041].

10.9. Applicant argues that there is no motivation to combine the references (Claims 22-25 and 27-30).

In response to this argument the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, both Maloney and Rosenblatt relate to displaying interactive realistic images to a consumer in e-commerce environment, together with enabling audio interaction with the consumer for the purposes of providing individual sales help. The motivation to combine Maloney with Rosenblatt to include that said "audibly presenting" step is conducted as if said human image would appear as audibly presenting to the subject said at least one of the queries from said data structure would be to allow consumers who have difficulty utilizing other input devices or have difficulty reading from the user interface to interact with said system (Maloney, page 20, lines 25-27). Furthermore, it would advantageously allow content providers to make substantial improvements in their customers' shopping experience to prevent the loss of customers to other sites employing novel shopping experiences, thereby improving customer support and the overall quality of the shopping experience (Rosenblatt, [0003]). Furthermore, the use of said virtual representative applications for Web retailers would advantageously attract to e- shopping those customers who prefer to communicate face-to-face with a salesperson, thereby potentially increase revenue.

10.9.1. Applicant argues that the prior art does not teach "causing a second human image to appear to the subject through the terminal in a manner projecting an appearance that the second human image answers the at least one query" (Claims 42 and 43).

In response to this argument the examiner points out that Rosenblatt was applied for this feature. Specifically, Rosenblatt teaches displaying various human virtual representatives to the subject through the subject terminal (Rosenblatt; [0008]).

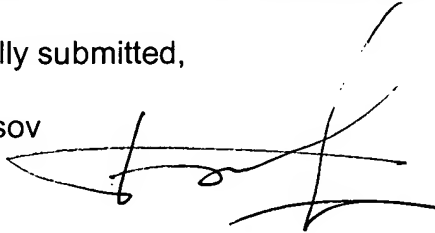
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Igor Borissov



Conferees:

John Weiss



John Hayes

